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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
The Development of Operational,)
Technical, and Spectrum Requirements)
For Meeting Federal, State, and Local)
Public Safety Agency Communication)
Requirements Through the Year 2010)
)
Establishment of Rules and Requirements)
For Priority Access Service)

WT Docket No. 96-86

To: The Commission

COMMENTS

BellSouth Corporation ("BellSouth"), on behalf of its wireless subsidiaries and affiliates, hereby submits its comments in the captioned docket. *Public Safety Communication Requirements*, WT Docket No. 96-86, *Second Notice of Proposed Rule Making*, FCC 97-373, (October 24, 1997) ("SNPRM"). As BellSouth previously suggested, the need for priority access to commercial mobile radio services ("CMRS") by public safety entities should be addressed in the context of public safety needs generally, and not as a separate matter.¹ Although BellSouth doubts that there will be significant demand for priority access to CMRS by public safety entities, BellSouth supports the adoption of general rules applicable to all CMRS that encourage the *voluntary* provision of such services.

¹ See BellSouth Comments on National Communications System ("NCS") Petition for Rulemaking, DA 96-604 (Jun. 17, 1996). BellSouth applauded the Commission's desire to ensure that cellular spectrum be available in emergencies, but felt that the communications needs of public safety entities should not be addressed on a piecemeal basis. To avoid a piecemeal approach, BellSouth urged that priority access issues be addressed in conjunction with general public safety spectrum needs. *Id.*

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BACKGROUND

Federal, state, and local public safety agencies have been allocated more than 47 MHz of spectrum to meet their wireless communications needs.² Although this is a substantial amount of spectrum, it is extremely fragmented. According to PSWAC, “[m]any agencies use two or more frequency bands for a single system, resulting in vehicles having to be equipped with two or more radios.”³ Public safety agencies have developed systems on different frequency bands that often cannot communicate with other public safety systems. For example, police officers and fire fighters could not communicate with each other during rescue operations for both the World Trade Center and Oklahoma City bombings.⁴ To minimize instances where public safety agencies cannot communicate with each other in emergency situations, the Commission now proposes to allocate 24 MHz of spectrum for nationwide interoperability between public safety agencies.⁵

BellSouth supports efforts to improve public safety communications and suggests that efforts be undertaken to develop a comprehensive spectrum allocation plan for public safety. Dedicating substantial spectrum for interoperability between public safety systems is a critical first step in this process. Additional efforts should be undertaken, however, to transition public safety systems from their current fragmented allocation to a more unified spectrum allocation.

² Final Report of the Public Safety Wireless Advisory Committee to the Federal Communications Commission and the National Telecommunications and Information Administration, at 16-18 (Sept. 11, 1996) (“*PSWAC Report*”).

³ *PSWAC Report* at 15.

⁴ *PSWAC Report* at 5.

⁵ *SNPRM* at ¶¶ 43-44.

As BellSouth indicated in its initial comments in this proceeding, it does not serve the public interest to continually address public safety communications needs on a piecemeal basis.⁶

In addition to establishing spectrum dedicated to nationwide operability, the Commission seeks comment on the need for establishing rules which would encourage CMRS providers to provide priority access ("CPAS") to their commercial systems by public safety entities. Given the amount of spectrum the Commission proposes to dedicate solely for interoperability use and the cost and technical problems associated with providing CPAS, BellSouth questions the viability of CPAS. As discussed below, however, BellSouth supports the adoption of rules that apply to all CMRS providers and encourage the provision of CPAS on a voluntary basis.

I. PRIORITY ACCESS TO CMRS SERVICES SHOULD BE ENCOURAGED, BUT NOT MANDATED

In June 1995, the Commission and the National Telecommunications and Information Administration established PSWAC to evaluate the communications needs of public safety entities and recommend possible solutions.⁷ PSWAC's analysis included an evaluation of CMRS as a possible means for satisfying public safety communications needs. According to PSWAC, CMRS systems are not capable of meeting critical public safety communications needs.⁸

⁶ BellSouth Comments at 1.

⁷ *PSWAC Report* at 2, 7.

⁸ *PSWAC Report* at 25. According to PSWAC, CMRS systems are not capable of meeting the following essential requirements at this time: (1) high reliability coverage; (2) affordable cost; (3) priority access for public safety entities during emergency periods and *peak usage periods*; (4) secure transmission; (5) sufficient reserve capacity; (6) mobile and portable units distinguished by the durability and ergonomic factors required by field personnel. *Id.* PSWAC theorized that the adoption of standards for the provision of

(continued...)

Although CMRS systems can be used to supplement or enhance public safety communications, they are not an essential component of such communications. CPAS is not, and should not be viewed as, a substitute for a dedicated public safety communications network. Unlike the provision of 911 service, which CMRS providers must offer because it is the primary means for CMRS subscribers to access emergency services, CPAS represents only one of a number of different methods that public safety entities may use to satisfy their communications needs. Public safety entities have their own networks and have just been allocated additional spectrum.

Moreover, before CMRS can adequately serve public safety communications needs, a number of technical hurdles must be overcome. As the Commission recognizes:

the PSWAC ISC asserts that commercial priority access compliance loses significance if the commercial network fails to meet reliability criteria. Lack of redundancy can produce weak links even if traffic is carried on a “first-in, first-out” basis. Concerning other constraints of priority access, the PSWAC ISC finds that with cellular systems based on Advanced Mobile Phone Service (AMPS), cellular units can be programmed through the handset of the phone. As a result, subscribers not authorized for priority access can program their handsets to the higher priority values. A feature code approach to provide access to a system of priority levels (such as that in the CPAS arrangements proposed by NCS) would be similarly vulnerable to compromise, and thus there is limited assurance that only authorized agencies would obtain priority access.⁹

⁸ (...continued)
public safety communications over CMRS systems could result in CMRS *developing* into a viable alternative for public safety communications. *Id.* at 25-26.

⁹ *SNPRM* at ¶ 183 (citing *PSWAC Report* at 317, 474-75).

Similarly, CMRS systems have capacity problems which must be addressed before CPAS can be an effective communications tool for public safety entities.¹⁰ Further, there is no standard for providing and supporting priority access on all CMRS systems.¹¹ According to the Commission, the “record indicates that PACA, and related technology necessary to implement it, is not capable of being applied in the current marketplace.”¹² Given the technical problems that must be resolved before CPAS can be offered to public safety entities, it would be unwise to mandate the provision of CPAS at this time.

The technical problems and shortcomings associated with CMRS systems “flow from market forces and are not readily susceptible to regulatory cures.”¹³ Thus, it would disserve the public interest for the Commission to promulgate regulations requiring CMRS carriers to provide CPAS.¹⁴ Instead, the Commission should permit market forces to drive solutions to CPAS issues. The Commission acknowledged that a number of Federal Government entities “are

¹⁰ BellSouth agrees that capacity solutions may obviate the need for CPAS. *SNPRM* at ¶ 195. Specifically, a number of CMRS providers often add mobile communications capacity to disaster areas by setting up temporary sites in critical areas. During Hurricane Andrew, for example, BellSouth established a number of such sites to assist emergency personnel. In any event, any CPAS solution must not interfere with the needs of citizens in emergencies. *See SNPRM* at ¶ 192. It certainly would not serve the public interest if a priority access system prevented a customer from making an emergency call because public safety entities occupied all system capacity.

¹¹ BellSouth Comments at 2-4.

¹² *SNPRM* at ¶ 190; *accord SNPRM* at ¶¶ 214-215. Priority Access and Channel Assignment (“PACA”) refers to a TIA Cellular Features Description that NCS claimed made priority access feasible on all cellular systems. NCS Petition at 5.

¹³ *PSWAC Report* at 317.

¹⁴ BellSouth concurs with NENA that if CPAS is mandated, the Commission must, at a minimum, adopt a cost-recovery mechanism. *SNPRM* at ¶ 211.

stressing that there is a growing need to use commercial services rather than dedicated systems, due to the potential for lower costs of commercial services.”¹⁵ To date, however, BellSouth has received little demand for “CPAS-like” services. As more public safety entities seek out CMRS providers to satisfy a portion of their communications needs, a marketplace for providing such supplementary public safety communications service will develop and cost-effective solutions will be created. Conversely, if CPAS does not prove cost-effective, CMRS will not be useful for public safety communications needs. Absent substantial demand for CPAS, CMRS providers should not be required to offer the service.

Even if CPAS were desired, it will take considerable time for CMRS providers to implement the service. If the Commission were to mandate CPAS, but public safety entities and manufacturers focus their resources on the newly allocated public safety spectrum, rather than on developing and implementing the technology and equipment necessary for CPAS, it is unlikely that CPAS can be offered in the near future. Accordingly, the Commission should not require CMRS providers to offer CPAS until there is substantial demand for the service and technical limitations regarding its provision have been overcome.

Despite these shortcomings, BellSouth supports the adoption of standards for the *voluntary* provision of CPAS provided that (i) the public safety community demonstrates that such service is necessary and (ii) the FCC affords liability and discrimination protection to CMRS carriers offering CPAS. Because the FCC has proposed to allocate 24 MHz of spectrum for public safety interoperability, CMRS systems and the concomitant need for CPAS may no longer be sought by public safety entities to serve their communications needs. By the time

¹⁵ *SNPRM* at ¶ 173.

technical problems associated with CPAS are worked out, it is likely that many public safety entities will be using the new spectrum allocated in this proceeding to serve interoperability needs. Rather than focus resources on CPAS, public safety entities may wish to perfect the use of the newly allocated spectrum. If, on the other hand, the public safety community still feels a need to explore CPAS, BellSouth supports the adoption of general rules and standards that encourage CMRS providers to offer CPAS on a voluntary basis.

Unless the Commission extends liability and discrimination protection to CMRS carriers offering CPAS, however, CMRS carriers will be discouraged from offering CPAS. BellSouth thus supports the Commission's tentative conclusion that:

it will be sufficient for a CMRS provider, in responding to any complaint alleging an unreasonable discrimination or undue preference under Section 202 of the Communications Act, to demonstrate that the service provided by the carrier is exclusively designed to enable authorized priority users, in emergency situations when spectrum used by the carrier is congested, to gain access to the next available channel on the service network of the carrier, before subscribers not engaged in public safety or NSEP functions.¹⁶

The Commission should also insulate CMRS providers from liability if a CMRS customer cannot make a call because public safety entities are using all available capacity. If the liability of CMRS carriers vis-a-vis their customers were to increase merely because of a CPAS offering, carriers are unlikely to offer such access.

¹⁶ *SNPRM* at ¶ 200. Alternatively, BellSouth supports forbearance from application of Section 202(a) to CPAS offerings. *See SNPRM* at ¶¶ 203-07.

II. PRIORITY ACCESS RULES SHOULD APPLY TO ALL CMRS PROVIDERS

BellSouth supports the Commission's tentative conclusion that any priority access rules that it adopts should apply to all CMRS providers.¹⁷ Given this tentative conclusion, BellSouth is uncertain why the FCC specifically sought comment on whether Mobile Satellite Systems ("MSS") should be subject to the priority access rules adopted in this proceeding.¹⁸ MSS is regulated as CMRS and should be subject to the same standards as other CMRS systems for the provision of CPAS. MSS was identified in the *PSWAC Report* as one of the most plausible CMRS systems for public safety purposes.¹⁹ No plausible explanation has been given for regulating MSS differently from other CMRS.

One of the communications problems currently experienced by the public safety community is fragmentation. If all CMRS providers are not subject to the same standards for the provision of CPAS, additional fragmentation will occur. Uniform standards for the provision of CPAS should not be objectionable because they merely set forth criteria for the provision of CPAS and do not require CMRS providers to offer such access. If certain CMRS providers are not capable of offering CPAS, they may decline to offer such capabilities and thus the rules impose no burden.

CONCLUSION

For the foregoing reasons, BellSouth supports adoption of CPAS standards governing the voluntary provision of CPAS *provided* (i) the public safety community demonstrates that such

¹⁷ *SNPRM* at ¶ 224.

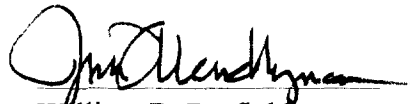
¹⁸ *SNPRM* at ¶ 225.


¹⁹ *PSWAC Report* at 41.

service is necessary; (ii) the FCC affords liability and discrimination protection to CMRS carriers offering CPAS; and (iii) the standards apply to all CMRS carriers.

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December 24, 1997

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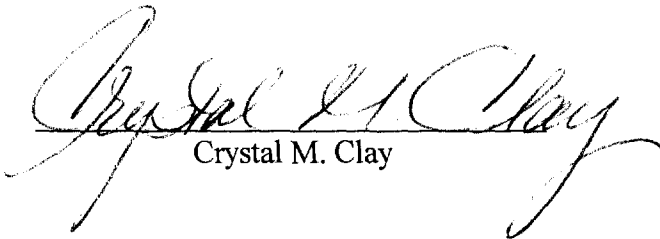
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